

Sunshine Week: Jennifer A. Borg, Esq. - NJ OPRA Blog

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3.20.15

We close Sunshine Week by featuring Jennifer A. Borg, Esq.

Ms. Borg is General Counsel and Vice President of North Jersey Media Group, publisher of *The Record*. She is a recognized authority in First Amendment and open governance matters, particularly as they affect newspapers, and has recently served as Chair of the New Jersey Press Association. She also has litigated numerous OPRA lawsuits with successful results. Ms. Borg was featured in the ABA Journal (July 2014) for her expertise in OPRA and public records access issues. Pashman Stein regularly serves as co-counsel with North Jersey Media Group on complex OPRA cases, several of which are presently on appeal before the Appellate Division.

[Interview with Jennifer A. Borg, Esq.](#)

1. How many OPRA requests do North Jersey Media Group's reporters submit each month? How many result in violations and/or litigation?

I have no way of knowing exactly how many requests are filed for any given time-period. North Jersey Media Group has over 100 reporters and very few requests actually make it to my desk. Usually, I am only contacted when a request is denied, although I do encourage reporters to allow me to help them draft the request. Requests that are too broad or unclear are often denied so I like to work with reporters to make sure the request is valid and specific.

I would estimate that we file 6-12 OPRA lawsuits a year.

2. What are the most common OPRA violations that you see?

The most common violations are not providing a privilege log or Vaughn index with the denial. Too often, an agency will just deny a request outright without listing the specific documents being withheld or explaining the reasons why each document is being withheld.

3. Do you think OPRA and OPMA are working well?

I think OPRA is an improvement over the former Right to Know Law. But, I agree with Senator Weinberg that amendments are greatly needed. OPRA has been in effect for over a dozen years so we have had time to evaluate where it can be strengthened. I have less experience with the Open Public Meetings Act (“OPMA”), but I find that it too is missing important language clarifying its terms. For instance, agencies need to be more specific when giving reasons for going into closed session. “Personnel” and “litigation” do not suffice. Because OPMA does not provide for attorneys’ fees to the prevailing party, many people don’t take significant violations to court. It’s simply too expensive for most people to pay a lawyer to litigate these claims.

4. If you could persuade the Legislature to take steps to improve government transparency, what would be your top suggestions?

OPMA needs to provide for attorneys’ fees so that members of the public have lawyers willing to take their cases to court. Without attorneys’ fees, the practical effect is that agencies can violate the statute without consequence. There are many changes I would like to see made to OPRA. For starters, I think the statute should make it clear that courts, and not just the GRC, can impose penalties against those who knowingly and willfully violate the statute and that requestors be allowed limited discovery to prove that an official engaged in such conduct. It makes no sense that a public official can flagrantly violate the law and not be held accountable for his or her misconduct. Custodians are required to perform an adequate search for records but too often judges do not allow a requestor limited discovery into whether the custodian’s search was proper and adequate. Without looking under the hood, how can we hold officials accountable when they knowingly violate the law? It is crucial for the public to be able to verify that a custodian or other official properly performed his or her job duties when responding to an OPRA request.